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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/829,382	04/09/2001	H. Robert Mašure	600-1-158N DIV	4666

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KLAUBER & JACKSON  
411 HACKENSACK AVENUE  
HACKENSACK, NJ 07601

EXAMINER

MOSHER, MARY

ART UNIT PAPER NUMBER

1648

DATE MAILED: 08/30/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/829,382

Applicant(s)

Masure et al

Examiner

Mosher

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE one MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 13-18, 28, and 33-72 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claims 13-18, 28, and 33-72 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

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### **DETAILED ACTION**

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 13-18, 28, 33, 39 drawn to antibody directed against choline binding protein, and method of use, classified in class 530, subclass 389.5.
- II. Claims 34, 35, 39, drawn to pharmaceutical composition & method comprising peptide WQPPRAI, classified in class 514, subclass 16.
- III. Claims 34, 35, 39, drawn to pharmaceutical composition & method comprising enolase, classified in class 424, subclass 94.1.
- IV. Claims 34, 35, 39, drawn to pharmaceutical composition & method comprising antibody directed against WQPPRAI, classified in class 424, subclass 139.1.
- V. Claims 36-38, 39, 40, drawn to treatment method using cationic small molecule, unclassifiable because of unspecified structure .
- VI. Claim 39, drawn to treatment method using choline binding protein, classified in class 424, subclass 237.1.
- VII. Claims 41-62, drawn to nucleic acids encoding cbp 112 protein (=cpbA, spsA, PspC) protein (comprising SEQ 1, 9, 10, 20, 24, 25), classified in class 536, subclass 23.7.
- VIII. Claims 41-46, drawn to nucleic acids encoding cbp 70 protein (=lytC?) (comprising SEQ 6), classified in class 536, subclass 23.7.

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- IX. Claim 63, drawn to nucleic acids encoding fragment of cpb80 protein ( SEQ 4), classified in class 536, subclass 23.7.
- X. Claims 64-70, drawn to nucleic acids encoding cbp 50 protein (comprising SEQ 8, 18, 19, 14?, 16?), classified in class 536, subclass 23.7.
- XI. Claim 71 , drawn to method of detecting a bacterium using a cbp 112 nucleic acid probe, classified in class 435, subclass 6.
- XII. Claim 71 , drawn to method of detecting a bacterium using a cbp 70 nucleic acid probe, classified in class 435, subclass 6.
- XIII. Claim 72 , drawn to treatment method using a cbp 112 nucleic acid, classified in class 514, subclass 44.
- XIV. Claim 72 , drawn to treatment method of using a cbp 70 nucleic acid, classified in class 514, subclass 44.

The inventions are distinct, each from the other because of the following reasons:

Inventions I-X are all mutually distinct and unrelated, because each involves a different product which is structurally and functionally distinct from any of the others.

Invention VII is related to inventions XI and XIII as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that

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product (MPEP § 806.05(h)). In the instant case, inventions XI (diagnostic method) and XIII (treatment method) are alternative, materially different methods of use of the invention VII DNA.

Invention VIII is related to inventions XII and XIV as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, inventions XII (diagnostic method) and XIV (treatment method) are alternative, materially different methods of use of the invention VIII DNA.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and different search requirements, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary E. Mosher, Ph.D. whose telephone number is (703) 308-2926. The examiner can normally be reached on Monday -Thursday and alternate Fridays from 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel, can be reached on (703) 308-4027. The fax phone number for this Group is now (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

August 29, 2002

  
**MARY E. MOSHER**  
**PRIMARY EXAMINER**  
**GROUP 1800** 1600